

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

CHRISTOPHER P. STOLLE,

PETITIONER,

CASE NO.: CL19-6582

V.

NANCY D. GUY,

RESPONDENT.

**PRELIMINARY RULES OF PROCEDURE FOR THE RECOUNT OF BALLOTS IN
THE ELECTION FOR THE HOUSE OF DELEGATES, 83RD DISTRICT**

This matter came before the Chief Judge of the Circuit Court of the City of Virginia Beach on November 26, 2019 for a preliminary hearing pursuant to Virginia Code § 24.2-802(B) to consider motions and establish preliminary rules of procedure for the recount of ballots in the November 5, 2019 election for the House of Delegates 83rd District ("HD-83"). The following preliminary rules of procedure are subject to review by the full Recount Court appointed in accordance with Virginia Code § 24.2-801. *See* Ex. 1.

I. PERIOD PRECEDING RECOUNT

1. All voting machine keys, poll books, statements of results, voting machine printed return sheets and printout tapes produced by computers and other machines, ballots, rejected absentee and provisional ballot envelopes, and other election material used or produced in connection with the election for the HD-83 held on November 5, 2019, and previously delivered to the Clerk of the Virginia Beach Circuit Court and the Clerk of the Norfolk Circuit Court, shall remain in safekeeping of the Clerks to whom they were delivered, who shall assure that such materials remain secure and undisturbed. All voting equipment used in the November 5, 2019 election shall remain secure and undisturbed in the location where it presently is situated until released by the Clerks or the State Board of Elections to the respective general registrars for programming and testing subject to the terms of the final order establishing the rules of procedure ("Final Rules of Procedure") to be entered by the full Recount Court;
2. To the extent that they have not already done so, the Clerk of the Virginia Beach Circuit Court and the Clerk of the Norfolk Circuit Court shall:
 - a. secure all paper ballots and other election materials in sealed boxes;
 - b. place all sealed boxes in a vault or room not open to the public or to anyone other than the Clerks and the Clerks' staff;

- c. cause such vault or room to be securely locked except when access is necessary for the Clerks or the Clerks' staff;
 - d. implement all other security measures, if any, taken by the Clerks with respect to trial evidence; and
 - e. certify in writing to this Court the security measures taken by the Clerks following the election, with said certification to be provided to this Court no later than 5:00 p.m. on November 25, 2019, via email transmission. *See* Ex.'s 2, 3.
3. To the extent that the Clerks may have departed from the foregoing procedures before entry of the Final Rules of Procedure, the Clerks also shall inform this Court, in writing, explaining the nature of any such departure, as soon as reasonably possible. The Clerks shall also immediately provide the certifications required by this paragraph and paragraph 2 to the parties;
4. Promptly upon request of the representative of either party to this proceeding, the Clerks and General Registrars of the City of Virginia Beach and City of Norfolk shall provide such representative with access to the following documents from the materials related to the November 5, 2019 HD-83 election:
- a. all statements of results, original and corrected;
 - b. computer print-out sheets and tapes;
 - c. abstracts of votes, original and corrected;
 - d. a precinct list showing the make and model of all voting machines delivered to each precinct in the 83rd House District for use on election day and the number and type of machine; and
 - e. all reports concerning election day problems or incidents in individual precincts that participated in the HD-83 election.

The Clerks and General Registrars shall not be required to provide information that does not already exist in a document;

5. In the event that materials are maintained under seal by the Clerk, the Clerk, upon notice to the parties and with appropriate security measures in place, shall open the sealed materials for the purposes of granting the access granted pursuant to these preliminary rules of procedure. The Clerk shall then reseal the materials and maintain them pursuant to the security measures mandated by these preliminary rules of procedure. The sealed materials obtained pursuant to these preliminary

rules of procedure shall be treated as confidential by the parties to this recount, the campaigns, and their legal counsel, as well as such experts and other persons retained to provide services related to this recount. They shall not be disseminated to any other party, and they may only be used in this proceeding absent further order from this Court.

II. DATE, TIME, AND LOCATION OF RECOUNT AND VOTING MACHINERY

1. The recount of ballots and redetermination of the votes cast in the November 5, 2019 election for HD-83 shall take place on December 12 and 13 of the year 2019:
 - a. with respect to those precincts located in the City of Virginia Beach, on the 2nd floor of the Voter Registration and Elections Office, Agricultural Conference Room, Virginia Beach Municipal Center Building #14, 2449 Princess Anne Road, Virginia Beach, VA 23456, beginning at 8:30 a.m. on December 12, 2019 and continuing on December 13, 2019 beginning at 8:30 a.m. if needed;
 - b. with respect to the precinct located in the City of Norfolk, in Courtroom 6A of the Norfolk Circuit Court, 150 St. Paul's Blvd., Norfolk, VA 23510, beginning at 9:30 a.m. on December 12, 2019 and continuing on December 13, 2019 at 9:30 a.m. if needed;
2. The recount and redetermination shall be conducted in accordance with the procedures and instructions established by the Final Rules of Procedure of the Recount Court. Additionally, to the extent not inconsistent with the provisions of the Final Rules of Procedure of the Recount Court, the recount shall be conducted in accordance with the State Board of Elections' Virginia Election Recounts, Step-by-Step Instructions and its Ballot Examples for Hand-counting Paper or Paper-based Ballots for Virginia Elections or Recounts. The results shall be recorded on forms prepared by the State Board of Elections;
3. The type of tabulators/scanners used for the recount and redetermination shall be determined by each City's Electoral Board.

III. RECOUNT COORDINATORS, RECOUNT OFFICIALS, AND ALTERNATE RECOUNT OFFICIALS

1. One electoral board member representing each party will be selected by the Recount Court to serve as recount coordinators. One pair of recount coordinators will be selected to represent the precincts in the City of Virginia Beach, and one pair will be selected to represent the precinct in the City of Norfolk.
2. The recount officials and alternate recount officials shall be chosen by the candidates from among the Chief Officers and Assistant Chief Officers of election previously appointed in the November 5, 2019 General Election pursuant to

Virginia Code § 24.2-115. The parties shall reasonably attempt, in good faith, to confer with one another about the selection of recount officials and alternate recount officials to ensure that the parties do not select duplicate officials;

3. There shall be five (5) recount teams for the recount conducted in the City of Virginia Beach, and there shall be two (2) recount teams for the recount conducted in the City of Norfolk. Each recount team shall consist of two (2) total recount officials—one recount official selected by Petitioner, and one recount official selected by Respondent;
4. Each of the parties shall also name three (3) recount officials as alternates for the recount conducted in the City of Virginia Beach, and one (1) recount official as alternate for the recount conducted in the City of Norfolk, from among the Chief Officers and Assistant Chief Officers of election previously appointed in the November 5, 2019 General Election pursuant to Virginia Code § 24.2-115;
5. Each of the parties shall submit to the Clerk of the Virginia Beach Circuit Court by no later than 2:00 p.m. on December 2, 2019, the names and addresses of the recount officials and alternate recount officials chosen to serve pursuant to paragraphs (1) and (2) above;
6. The Clerk of the Virginia Beach Circuit Court and the Clerk of the Norfolk Circuit Court shall issue the necessary summonses to compel the attendance of the recount coordinators, recount officials, and alternate recount officials chosen by the parties. Said summonses shall be delivered by a private process server;
7. The recount coordinators and recount officials shall be officers of the Court acting under its jurisdiction, and shall be subject to training as may be provided by the State Board of Elections and/or recount coordinators, using training materials provided by the State Board of Elections. The parties shall be provided with 24 hours advance notice of all training sessions and logistics and accuracy testing, and they shall be given the opportunity to attend any such training session. The parties shall be provided copies of training materials 24 hours in advance of those materials being provided to recount coordinators and recount officials. Additionally, the parties shall be permitted to observe the logistics and accuracy testing of the machinery that will be utilized in the recount and redetermination;
8. Neither party nor the representative of each party, including but not limited to political parties and campaign committees, shall undertake any in-person, telephonic, or electronic training of any recount coordinator, recount official, or alternate recount official in their duties. No written communication from a party or his representative to any recount coordinator, recount official, or alternate recount official shall be made *ex parte*. Any written communication to any recount coordinator, recount official, or alternate recount official shall be simultaneously served on counsel for the opposing party and filed with the Clerk of the Virginia

Beach Circuit Court, except that communications addressing only the time and place of the recount, time and place of training, availability to serve, and similar administrative matters are not subject to this requirement;

9. No persons are permitted to bring cellular devices into the recount locations except for legal counsel, the Electoral Boards, and the General Registrars.

IV. TRAINING OF RECOUNT OFFICIALS

1. The training of the recount officials for the recount and redetermination shall take place after check-in on December 12, 2019, in the same location of the recount, for the recount officials for the City of Virginia Beach.
2. The training of the recount officials for the recount and redetermination shall take place after check-in on December 12, 2019, in the same location of the recount, for the recount officials for the City of Norfolk.

V. RECOUNT OBSERVERS

1. Each party may appoint and is entitled to have present at the recount and redetermination one observer for each team of two recount officials. Said persons shall qualify as observers by submitting to the recount coordinators a statement, signed by a representative of or by counsel for a party, giving the person's name and authorizing him or her to represent the candidate as a duly-designated observer. A photocopy form authorization shall suffice. Not later than 2:00 p.m. on December 2, 2019, the parties shall exchange with one another and lodge with the Clerk the form of their respective authorization statements that will constitute the credentials of the recount observers. In addition thereto, counsel for each of the parties may be present to observe the recount;
2. The observers shall have the right to communicate with their respective campaigns or legal counsel from the room(s) in which the recount is being conducted, so long as such communication does not contravene any local rule regarding use of electronic devices. The observers shall not disrupt or otherwise interfere with the conduct of the recount in any way. Any questions from legal counsel should be directed to the recount coordinators, General Registrars, or staff from the respective locality.

VI. SPECIFIC PROVISIONS RELATED TO THE RECOUNT IN THE CITY OF NORFOLK

1. Cheryl Dougherty shall be designated as the Norfolk Site Coordinator and shall oversee the recount and redetermination for the precinct in the City of Norfolk. Cheryl Dougherty shall report any issues that may arise to the Chief Judge of the Virginia Beach Circuit Court, if necessary;

2. Upon the conclusion of the recount and redetermination in the City of Norfolk, Cheryl Dougherty shall certify the original ballot results and cause the Norfolk Sheriff's Office to deliver such certification to the Chief Judge of the Virginia Beach Circuit Court.

VII. RECOUNT COURT TO CONVENE

1. The full Recount Court, as appointed pursuant to Virginia Code § 24.2-801, shall convene on Tuesday, December 3, 2019 at 11:00 a.m., in the Virginia Beach Circuit Court, to dispose of all motions made by the parties and to enter an Order finalizing the Rules of Procedure for the recount and redetermination for the 2019 HD-83 election;
2. The Recount Court shall also convene after December 13, 2019, at a date and time to be determined, for the purpose of ruling on any challenged ballots and votes and to enter an Order certifying the winner of the 2019 HD-83 election.

VIII. MOTIONS AND OBJECTIONS

The parties shall file any motions and objections to these preliminary rules of procedure in writing with the Clerk of the Virginia Beach Circuit Court no later than 2:00 p.m. on December 2, 2019.

EXECUTIVE SECRETARY
KARL R. MADE

ASSISTANT EXECUTIVE SECRETARY &
LEGAL COUNSEL
EDWARD M. MACON

COURT IMPROVEMENT PROGRAM
SANDRA L. KARISON, DIRECTOR

EDUCATIONAL SERVICES
CAROLINE E. KIRKPATRICK, DIRECTOR

FISCAL SERVICES
JOHN B. RICKMAN, DIRECTOR

HUMAN RESOURCES
RENÉE FLEMING MILLS, DIRECTOR

SUPREME COURT OF VIRGINIA



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100 NORTH NINTH STREET
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LEGAL RESEARCH
STEVEN L. DALLE MURA, DIRECTOR

LEGISLATIVE & PUBLIC RELATIONS
KRISTI S. WRIGHT, DIRECTOR

MAGISTRATE SERVICES
JONATHAN E. GREEN, DIRECTOR

MEMORANDUM

TO: The Honorable Glenn R. Croshaw, Chief Judge
Second Judicial Circuit
The Honorable William R. Marchant, Judge
Thirteenth Judicial Circuit
The Honorable W. Allan Sharrett, Chief Judge
Sixth Judicial Circuit

CC: The Honorable Tina E. Sinnen, Clerk
Ms. LaTasha Booker, Judicial Assistant
Ms. Norma L. Catoe, Judicial Assistant
Ms. Debra C. Dianis, Judicial Assistant

FROM: Patricia G. Davis

DATE: November 21, 2019

RE: Designation for Virginia Beach Circuit Court - Petition for Recount

3 judges

Thank you for agreeing to sit in the Circuit Court of the City of Virginia Beach to hear the petition for recount for the election held November 5, 2019 for the Office of Member, House of Delegates, 83rd House District, Commonwealth of Virginia. Referenced recount is filed pursuant to Sections 24.2-800 et seq. of the Code of Virginia.

Judge Croshaw, Chief Judge of the Second Judicial Circuit, will serve as coordinating judge.

Thank you for accepting this assignment.

PGD:mej
Enclosure

Supreme Court of Virginia

To All To Whom These Presents Shall Come — Greetings:

Know Ye, That I, DONALD W. LEMONS,

Chief Justice of the Supreme Court of Virginia, by virtue of authority vested in me by law,
do hereby designate —

The Honorable William R. Marchant, Judge
of the Thirteenth Judicial Circuit
and

The Honorable W. Allan Sharrett, Chief Judge
of the Sixth Judicial Circuit

to preside in the Circuit Court of the City of Virginia Beach
with

The Honorable Glenn R. Croshaw, Chief Judge
of the Second Judicial Circuit

as members of a three-judge court, authorized by section 24.2-800 et seq. of the Code of
Virginia 1950, in the case of —

Christopher P. Stolle

v.

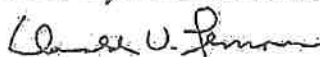
Nancy D. Guy

Case No. CL19-6582

In Re: Petition for Recount of the Ballots
in the General Election held on November 5, 2019
for the Office of Member, House of Delegates,
83rd House District, Commonwealth of Virginia.

To be heard on a date set by the
Chief Judge of the three-judge court, and continuing
until the matters presented in this case
have been disposed of according to law.

It is so Ordered. Given under my hand and seal this 21st day of November 2019.



Chief Justice of the Supreme Court of Virginia

(SEAL)



Office of the Clerk of the Circuit Court

JUDICIAL CENTER - BUILDING 10B
2425 NIMMO PARKWAY
VIRGINIA BEACH, VIRGINIA
23456-9017

**TINA E. SINNEN
CLERK**

TO: The Honorable Glenn R. Croshaw
FROM: Tina E. Sinnen, Clerk
Date: 11-25-2019

I, Tina E. Sinnen, Clerk, certify that the proper security measures have been taken to secure all printed ballots and other elections materials in sealed boxes, place all of the sealed boxes in our vault which is not open to the public or anyone other than the Clerk and her staff, cause the vault to be securely locked except when access is necessary for the Clerk and her staff.

Tina E. Sinnen, Clerk
Virginia Beach Circuit Court

jw/tes

EXHIBIT 2

Clerk of Court
George E. Schaefer

Chief Deputy
Thomas A. Larson

Executive Assistant
Cheryl A. Dougherty

COMMONWEALTH OF VIRGINIA



OFFICE OF THE CLERK FOURTH JUDICIAL CIRCUIT NORFOLK CIRCUIT COURT

150 Saint Paul's Boulevard, 7th Floor
Norfolk, Virginia 23510
Phone: (757) 769-8539
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Supervising Deputies

Criminal
Susan Lawson
Civil, Deeds & Probate
Crystal Porter
**Licenses, Permits, Finance
& Jury**
Gerald L. Stokes

Comptroller
Nicholas D. Georges

Systems Administrator
Gregg J. Duquette

November 25, 2019

TO: The Honorable Glenn R. Croshaw
Chief Judge
Virginia Beach Circuit Court
FROM: George E. Schaefer
Clerk

I, George E. Schaefer, Clerk of Norfolk Circuit Court, certify all election materials related to the November 5, 2019 election were presented to the Clerk of this Court for safekeeping in accordance with Virginia State Code 24.2-669.

I further certify all election materials were secured and have remained secure since that date.

All ballots and other election materials are maintained in sealed boxes with the sealed boxes located in a securely locked room accessible only my Chief Deputy and Executive Assistant.

A handwritten signature in black ink that reads 'George E. Schaefer'.

George E. Schaefer
Clerk
Norfolk Circuit Court